



भारतीय रिज़र्व बैंक
RESERVE BANK OF INDIA
www.rbi.org.in

RBI/2012-13/28

DNBS (PD) CC No.292/03. 02.001/2012-13

July 2, 2012

To
All Non-Banking Finance Companies

Dear Sir,

Master Circular 2012 – Opening of Branch-Subsidiary-Joint Venture-Representative office or Undertaking Investment Abroad by NBFCs

As you are aware, in order to have all current instructions on the subject at one place, the Reserve Bank of India issues updated Circulars / notifications. The instructions on captioned subject are reproduced below. The notification has also been placed on the RBI web-site (<http://www.rbi.org.in>).

Yours sincerely,

(Uma Subramaniam)
Chief General Manager-in-Charge

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1. Overseas Investment by NBFCs- No Objection (NoC) from DNBS, RBI

NBFCs were advised to refer to Regulation No. 7 of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2004, dated July 07, 2004, in terms of which an Indian party requires prior approval of the concerned regulatory authorities both in India and abroad, to make an investment in an entity outside India engaged in financial services activities. Further in terms of para B.5.3 of the Master Circular on Direct Investment in Joint Venture (JV) / Wholly owned subsidiary (WOS) abroad dated July 01, 2009 issued by Foreign Exchange Department, RBI, regulated entities in the financial sector making investments in any activity overseas are required to comply with the above regulation.

Instances have been observed where NBFCs have made overseas investments without regulatory clearance of the Department of Non-Banking Supervision, Reserve Bank of India. Any investments made by NBFCs without regulatory clearance is a violation of FEMA 2004 and attracts penal provisions.

In this regard, it is emphasised that all NBFCs desirous of making any overseas investment must obtain 'No Objection' (NoC) of the Department of Non-Banking Supervision of RBI before making such investment, from the Regional Office in whose jurisdiction the head office of the company is registered.

Applications in this regard shall clearly state the activities intended to be undertaken by the overseas entity. NBFCs may also note that in terms of the Regulations *ibid*, they are not permitted to make direct investment in a foreign entity engaged in activities not approved under FEMA.

2. The Non-Banking Financial Companies (Opening of Branch/Subsidiary/Joint Venture/ Representative Office or Undertaking Investment Abroad by NBFCs) Directions, 2011.

2.1 Prior Approval of RBI in cases of Opening of branch/subsidiary/joint venture/representative office or undertaking investment abroad by NBFCs

1. No NBFC shall open subsidiaries/joint ventures/representative office abroad or shall make investment in any foreign entities without obtaining prior approval in writing from the Reserve Bank of India. The application from the NBFC seeking No Objection would be considered subject to these directions.
2. These directions are in addition to those prescribed by Foreign Exchange Department for opening of branches abroad or for investments in Joint Venture/Wholly Owned Subsidiary.
3. The following general and specific conditions are prescribed for permitting subsidiaries/joint ventures/representative office or making investments abroad by a NBFC (both deposit taking and non-deposit taking) registered with RBI.

2.2 General conditions

- a. Investment in non-financial service sectors shall not be permitted.
- b. Direct investment in activities prohibited under FEMA or in sectoral funds will not be permitted.
- c. Investments will be permitted only in those entities having their core activity regulated by a financial sector regulator in the host jurisdiction.
- d. The aggregate overseas investment should not exceed 100% of the NoF. The overseas investment in a single entity, including its step down subsidiaries, by way of equity or fund based commitment shall not be more than 15% of the NBFC's owned funds.
- e. Overseas investment should not involve multi layered, cross jurisdictional structures and at most only a single intermediate holding entity shall be permitted.
- f. (i) The CRAR of the deposit taking NBFCs, post investment in subsidiary abroad, should be not less than that applicable to deposit taking NBFCs in terms of Non-Banking Financial (Deposit Accepting or Holding) Companies Prudential Norms(Reserve Bank) Directions, 2007, as amended from time to time;
(ii) The CRAR of the NBFC-ND-SI, post investment in subsidiary abroad, should be not less than that applicable to them in terms of Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007, as amended from time to time;
(iii) The CRAR of the non-deposit taking NBFCs (other than NBFC-ND-SI), post investment in subsidiary abroad, should not be less than 10%, or as modified from time to time;
- g. The NBFC should continue to maintain required level of NOF after accounting for investment in the proposed subsidiary/investment abroad as prescribed in the explanation to Section 45-IA of the RBI Act, 1934.
- h. The level of Net Non-Performing Assets of the NBFC should not be more than 5% of the net advances;
- i. The NBFC should be earning profit for the last three years and its performance in general should be satisfactory during the period of its existence.
- j. The NBFC shall comply with the regulations issued under FEMA, 1999 from time to time;

- k. Regulatory compliance and servicing of public deposits, if held by the NBFC, should be satisfactory
- l. The NBFC shall comply with the KYC norms;
- m. SPVs set up abroad or acquisition abroad shall be treated as investment or subsidiary/joint venture abroad, depending upon percentage of investment in overseas entity;
- n. An annual certificate from statutory auditors shall be submitted by the NBFC to the Regional Office of Department of Non-Banking Supervision (DNBS) where it is registered, certifying that it has fully complied with all the conditions stipulated under these Guidelines for overseas investment;
- o. A quarterly return in the enclosed format shall be submitted by the NBFC to the Regional Office of DNBS and also Department of Statistics and Information Management (DSIM)
- p. If any adverse features come to the notice of the Bank, the permission granted shall be withdrawn. All approvals for investment abroad shall be subject to this condition.

2.3 Specific conditions.

(A) Opening of Branch

As a general policy, NBFCs shall not be allowed to open a branch abroad. However Non-banking financial companies which have already set up branch(es) abroad for undertaking financial business shall be allowed to continue to operate them subject to complying with the revised guidelines, as applicable.

(B) Opening of subsidiary abroad by NBFCs

In case of opening of a subsidiary abroad by the NBFCs, all the conditions as stipulated above shall be applicable. The NoC to be issued by the Bank is independent of the overseas regulators' approval process. In addition, the following stipulations are made, which shall be applicable to all NBFCs:

- a. In case of opening of subsidiary abroad, the parent NBFC shall not be permitted to extend implicit or explicit guarantee to or on behalf of such subsidiaries;
- b. No request for letter of comfort in favour of the subsidiary abroad from any institution in India shall be permitted;
- c. It shall be ensured that NBFC's liability in the proposed overseas entity is restricted to its either equity or fund based commitment to the subsidiary;
- d. The subsidiary being established abroad should not be a shell company i.e "a company that is incorporated, but has no significant assets or operations." However companies undertaking activities such as financial consultancy and advisory services with no significant assets shall not be considered as shell companies;
- e. The subsidiary being established abroad by the NBFC should not be used as a vehicle for raising resources for creating assets in India for the Indian operations;

- f. In order to ensure compliance of the provisions, the parent NBFC shall obtain periodical reports/audit reports about the business undertaken by the subsidiary abroad and shall make them available to Reserve Bank and inspecting officials of the Bank;
- g. If the subsidiary has not undertaken any activity or such reports are not forthcoming, the approvals given for setting up a subsidiary abroad shall be reviewed/ recalled;
- h. The permission granted to any NBFC for setting up of overseas subsidiary shall be subject to condition that the subsidiary shall make disclosure in its Balance Sheet to the effect that liability of the parent entity in the proposed overseas entity shall be limited to its either equity or fund based commitment to the subsidiary;
- i. All the operations of the subsidiary abroad shall be subject to regulatory prescriptions of the host country.

(C) Joint Ventures abroad

Investments abroad, other than in subsidiaries also shall be governed by same guidelines as those applicable to subsidiaries.

(D) Opening of representative offices abroad by NBFCs

The representative office can be set up abroad for the purpose of liaison work, undertaking market study and research but not undertaking any activity which involves outlay of funds, provided it is subject to regulation by a regulator in the host country. As it is not envisaged that such office would be carrying on any activity other than liaison work, no line of credit should be extended.

The parent NBFC shall obtain periodical reports about the business undertaken by the representative office abroad. If the representative office has not undertaken any activity or such reports are not forthcoming, the approvals given for the purpose shall be reviewed/ recalled.

3. The Policy will be reviewed based on experience gained.

4. Violation of these directions shall invite penal action under the provisions of Reserve Bank of India Act, 1934.

Annex

Quarterly Return to be submitted by NBFCs having overseas investment - March 31st / June 30th / September 30th / December 31st

Sr. No.	Name of the WOS/JV (for JV, indicate names of partners)	Country and date of incorporation	Date of NoC from DNBS	Business undertaken

Sr. no.	Parameters at end of period					
a)	CRAR:					
b)	NoF:					
c)	Net Profit of the NBFC as per the last audited balance sheet:					
d)	Amount of remittance made to the WOS/JV during the quarter:					
	<table border="1"> <tr> <th>Name of the WOS/JV</th><th>Amount remitted</th></tr> <tr> <td></td><td></td></tr> </table>	Name of the WOS/JV	Amount remitted			
Name of the WOS/JV	Amount remitted					
e)	Cumulative investment (equity/fund based commitment) in the WOS/JV at the end of the quarter (amount and as percentage of owned funds of the NBFC):					
	<table border="1"> <tr> <th>Name of the WOS/JV</th><th>Amount remitted and as % of owned funds including step down subsidiaries if any</th></tr> <tr> <td></td><td></td></tr> </table>	Name of the WOS/JV	Amount remitted and as % of owned funds including step down subsidiaries if any			
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f)	Aggregate overseas investment of the NBFC as percentage of NoF of the NBFC:				
h)	Whether the overseas WOS/JV is regulated in the host country. If yes:				
	Name of the regulator:	Any regulatory visits made during the reporting period:	Concerns expressed by the regulator:	Any regulatory changes during the period which would impact the business of the subsidiary:	Fines / penalties levied by the overseas regulator, if any:
j)	Nature of support extended to the JV/WOS by the parent NBFC during the quarter including Guarantee, Letter of Comfort (Also mention whether any other kind of support were given including technical knowledge):				
	Name of the WOS/JV		Nature of support		
k)	Returns obtained from the WOS/JV during the quarter:				
	Name of the WOS/JV		Returns obtained		
l)	Financial details of JV/WOS				
	Name of the WOS/JV	Net profit	Asset size (Details of significant items of assets and liabilities may be attached)		

Appendix

Sr No	Circular No	Date
1.	DNBS (PD).CC.No.173/03.10.01/2009-10	May 03, 2010
2.	DNBS (PD) CC.No. 222/03.10.001/2010-11	June 14, 2011